PACLINE (M) SDN. BHD.

v.

PENDAFTAR HAKMILIK, SELANGOR

HIGH COURT MALAYA, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[ORIGINATING MOTION NO. 25-14-1994]
13 JULY 1994

LAND LAW: Registrar's caveat - Appeal - Who can appeal - Caveat entered on the same grounds as private caveat that was cancelled.

Kwan Yoon Fatt and Sons Ltd. (KYF), registered owner of a piece of land, entered into an agreement with Trends Building Sdn. Bhd. (Trends) to develop the said land into a housing project. Trends entered into sale and purchase agreements with some persons for the sale of some individual units in the housing project. Before the project could be completed KYF terminated their contract with Trends. KYF transferred the said land to the plaintiff.

One of the purchasers of the individual units is one Tan Kim Foong who entered a private caveat. The said caveat was cancelled by an *exparte* order. Tan Kim Foong being dissatisfied convinced the Pentadbir Tanah Daerah to lodge a Registrar's caveat, which the Pentadbir did. The plaintiff appealed against the Pentadbir's decision.

Held:

[1] Tan Kim Foong had applied for a private caveat. Her caveat was cancelled by this Court. The Registrar sought to do more than that by filing his caveat in substitution for Tan Kim Foong's caveat and on the same grounds which the Court held did not give her any registrable interest against the said lands.

[2] The second limb of sub section (c) of s. 321(3) after the disjunctive "OR" must of necessity refer to the proprietor of the land and nobody else. The right of appeal under s. 418 of the National Land Code is not confined to "the proprietor of the land affected" as spelt out in s. 321(3) (b) but "Any person or body aggrieved by any decision under this Act".

[Appeal allowed].

Cases referred to:

*Tan Heng Poh v. Tan Boon Thong & Ors. [1992] 2 MLJ 1 (**foll**)*
*Registrar of Titles Johore v. Temenggong Securities Ltd. [1976] 2 MLJ 44 (**foll**)*
*Malayan Banking Bhd. v. Pendaftar Hakmilik Negeri Pahang & Anor. [1991] 1 MLJ 119 (**not foll**)*

Legislation referred to:

National Land Code 1965, ss. 321, 322 & 418

For the plaintiff - Logan Sabapathy (David Morrais with him); M/s. Logan Sabapathy & Co.
For the defendant- Nasir, State Legal Advisor's Office, Selangor

JUDGMENT

Mahadev Shankar J:

This is an appeal under the provisions of ss. 321 and 418 of the National Land Code 1965 (the Code) against a Registrar's Caveat.

The full background of the facts are set out in my judgement in OM. 25-3-94 and Civil Suit 22-55-94 which involve the same subject matter namely the lands which are comprised in the titles whose details are set out in the title to this motion.

In a nutshell these lands were originally registered in the name of Kwan Yoon Fatt and Sons Ltd. (KYF) who entered into an agreement with Trends Building Sdn. Bhd. (Trends), whereby Trends were to develop the said land into a Housing Project, give part of the development to KYF and retain the rest for itself. In the course of carrying out its obligations under the Development Agreement, Trends entered into Sale and Purchase Agreements with some persons for the sale of some individual units in the Housing Project. Before the project could be completed KYF terminated their contract with Trends. KYF was still registered owner. It transferred the said land to Pacline (M) Sdn. Bhd. who registered themselves as the new owners.

Tan Kim Foong claims she was one of the proposed sub-purchasers who had contracted with Trends to buy a unit in the project. She paid 10% of the Purchase Price and got a receipt. She claimed that she had an interest in the said land and caveated all five titles. The grounds on which she caveated it are set out fully in her Statutory Declaration dated 12 November 1993.

That caveat was cancelled by an *ex parte* order of this Court on 20 January 1994. The order was registered on 16 February 1994.

The grounds for the Court order are those stated in the Supreme Court decision of *Tan Heng Poh v. Tan Boon Thong & Ors.* [1992] 2 MLJ 1 and the new proviso to s. 322(1) of the Code which expressly prohibits the entry of a caveat in respect of a claim involving a limited title or interest in the alienated land.

When Tan Kim Foong found that her caveat had been cancelled she personally saw the Pentadbir Tanah Daerah on the morning of 21 February 1994 and complained to him of the cancellation. According to a typed letter dated the same day 21 February 1994 and handed in at 3.15 p.m., Tan Kim Foong says that the PTD Khairuddin bin Said advised her to make a formal request to enter a Registrar's Caveat to prevent the fraud set out in her Statutory Declaration dated 12 November 1993. She further states that her caveat was cancelled without notice to her.

On the strength of this letter the PTD lodged a Registrar's Caveat against all five titles at 3.15 p.m. the same day i.e. immediately upon receipt of the letter.

Pacline got to know of this later and filed this appeal by way of originating motion on 11 April 1994.

The PTD's alacrity in filing his Caveat was not matched by his dilatoriness in serving notice of the Caveat on Pacline. This was only done on 14 April 1994 after Pacline had commenced these proceedings.

On what grounds did he act in such a hurry on 21 February 1994? In this appeal, and notwithstanding that both Pacline's affidavits have been served upon him, there is no affidavit-in-reply at all as to why he acted in the manner he did. All I have is a statement from the Bar table by the State Legal Advisor that Encik Khairuddin's explanation is that he acted on the strength of Tan Kim Foong's letter. He could not explain why he delayed the service of the notice.

This really is a remarkable state of affairs and I will leave it to those concerned to look further into this aspect of the matter.

For the time being and in so far as it pertinent to this appeal, I must say that the act of the PTD was wholly misconceived.

Mr. Logan Sabapathy has drawn my attention to *Registrar of Titles Johore v. Temenggong Securities Ltd.* [1976] 2 MLJ 44. I agree with the second head note there which reads:

> (2) the interests which the Registrar of Titles was empowered to protect under s. 320(1) (b) were confined to interests in the land that were recognised by the Land Code as being either registrable or otherwise entitled to protection. An unsecured creditor of the proprietor of the land had no such interest in the land;

This *ratio* is extracted from the penultimate paragraphs of the judgment at page 48. These words bear repetition.

> ...So far as these three categories of persons are concerned, in their Lordships' view the clear intention of Parliament in including paragraph (b) in s. 320(1) was to enable the Registrar of his own intitiative to do for persons in any of these categories what could have been done upon an application made by them for a private caveat; and to do no more than that.

Tan Kim Foong had applied for a private caveat. Her caveat was cancelled by this Court. The Registrar sought to do "more than that" by filing his Caveat in substitution for Tan Kim Foong's Caveat and on the same grounds which the Court held did not give her any registrable interest against the said lands.

I would like to deal here with *Malayan Banking Bhd v. Pendaftar Hakmilik Negeri Pahang & Anor.* [1991] 1 MLJ 119. It was held in this case by a Court of co-ordinate jurisdiction that an appeal under s. 321 and s. 418 of the National Land Code could only be brought by the proprietor of the land and not a chargor.

It was also suggested that a proprietor may not appeal until the Registrar had first refused to cancel the caveat.

The material words in s. 321(3) are as follows:-

> (3) A Registrar's caveat shall continue in force until it is cancelled by the Registrar-
> (c) pursuant to any order of the Court made on an appeal under s. 418 decision to enter against his the caveat **or** his refusal of any application for its cancellation under paragraph
> (b) ...

The second limb of sub-section (c) after the disjunctive "OR" must of necessity refer to the proprietor of the land and nobody else. The right of appeal under s. 418 of the National Land Code is not confined to "the proprietor of the land affected" as spelt out in s. 321(3) (b) but "Any person or body aggrieved by any decision under this Act."

With respect I am unable to agree with the decision in [1991] 1 MLJ 119. I think that this appeal is competent and must succeed. The more so as the respondent did not seek to defend it.

I therefore order the Registrar's Caveat to be cancelled so soon as the order pursuant to this judgment is served upon him.

I further order that the costs of this appeal be taxed and paid by the respondent to the appellant.